



September 27, 2010

VIA ECFS

Ms. Marlene H. Dortch  
Federal Communications Commission  
Office of the Secretary  
445 12<sup>th</sup> Street, SW  
Washington, D.C. 20554

*Re: Ex Parte Letter in CS Docket 97-80, PP Docket No. 00-67*

Dear Ms. Dortch:

TiVo files this ex parte letter to correct the record with respect to certain assertions about TiVo's IP backchannel proposal made by the NCTA in an *ex parte* letter dated September 21, 2010 and filed in the above-captioned dockets. NCTA's estimates of the cost to implement the IP backchannel proposal are unexplained, unsupported, and appear overstated.

- NCTA relies on current tuning adapter deployment to arrive at an inflated per subscriber cost to implement an IP backchannel. Currently, there are MSOs representing approximately 15 million digital households who *may* have deployed Switched Digital Video (SDV).<sup>1</sup> Thus, SDV *could* be deployed to no more than 15 million homes if *every* headend operated by these MSOs was deploying SDV (which is not the case). Yet, NCTA divides its estimated *total* cost for the *entire cable industry* to deploy the IP backchannel solution by the number of tuning adapters provided by this *subset* of operators to arrive at a very misleading per subscriber figure.<sup>2</sup>

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<sup>1</sup> SNL Kagan reports that Time Warner Cable, Cox, and Cablevision served a total of 15.4 million digital households as of June 2010.

<sup>2</sup> If TiVo's estimate of the cost of tuning adapters is low, that only bolsters the case that the IP backchannel approach is more economically efficient. NCTA Ex Parte, CS Docket No. 97-80 at fn. 20 (Sept. 21, 2010) ("NCTA Ex Parte"). Even using the NCTA's own inflated estimates, the cost of implementing an IP backchannel solution would represent 0.1% of the cable industry's capital expenditures last year. <http://www.ncta.com/statistics.aspx>

- It is undisputed that SDV deployment is expected to increase dramatically in the next year or two. Comcast has announced plans to broadly deploy SDV to its 23 million subscriber base and “NCTA estimates that 60% of systems will offer SDV by year end 2011, and far more not long after.”<sup>3</sup> Despite this acknowledgement, NCTA omits the growth of SDV from its cost equation.<sup>4</sup>
- NCTA’s concerns about standardization and operation are overstated.
  - In 12 months, TiVo and RCN were able to define, complete, and deploy IP backchannel switching protocols for VOD across RCN’s multiple systems, which is far more challenging than switching among standard package channels.
  - The IP solution can have less latency than the existing tuning adapter.
- NCTA continues to claim that there are no technical issues with tuning adapters despite dozens of unsolicited comments filed by consumers in this proceeding since June 2010, complaining of serious issues with tuning adapters.
- The tuning adapter was never chosen by TiVo as the preferred solution over the IP backchannel. The industry rejected TiVo’s IP backchannel proposal in 2007 as it rejects the proposal today.<sup>5</sup>

Direct access to SDV without using cable-provided equipment is essential for true retail competition. The NCTA recognizes this in its statement of consumer principles for video devices – “Consumers should have the option to purchase video devices at retail that can access their multichannel video provider’s video services without a set-top box supplied by that provider”<sup>6</sup> -- but apparently remains unwilling to put those principles into practice.

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<sup>3</sup> NCTA Ex Parte at 6.

<sup>4</sup> Likewise, NCTA notes that the absolute number of TiVo subscribers has declined since DIRECTV terminated its relationship with TiVo in 2006 yet fails to mention the more salient point that the number of TiVo subscribers using CableCARDS is increasing. *See, e.g.*, Time Warner Cable Comments, CS Docket No. 97-80 at n.14 (June 14, 2010). This is not surprising as there is no way for retail TiVo DVRs to receive digital cable programming without a CableCARD.

<sup>5</sup> In addition, the tuning “adapter” was never intended to be a cable set-top box. See Press Release, NCTA and TiVo Announce Switched Digital Solution for HD DVRs (Nov. 26, 2007) (the adapter will “enable TiVo users to enjoy innovative switched digital services *without the need for a set-top box*.” (emphasis added.)

<sup>6</sup> Letter from Kyle McSlarrow, NCTA, to Chairman Julius Genachowski, FCC (March 12, 2010).

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Please do not hesitate to contact me should you have any questions regarding this filing.

Respectfully submitted

**/s/ Matthew Zinn**

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Senior Vice President, General Counsel, Secretary & Chief Privacy Officer

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